

NOCKEY CONSTRUCTION, INC.
v.
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-13-A

Decided May 1, 1992

Appeal from the disapproval of a grant under the Indian Business Development Program.

Vacated and remanded.

1. Bureau of Indian Affairs: Administrative Appeals: Discretionary
Decisions--Indians: Financial Matters: Financial Assistance

When an official of the Bureau of Indian Affairs determines that an application for financial assistance under the Indian Financing Act should be disapproved, the issuance of a preliminary determination to that effect, allowing the applicant an opportunity to respond, could significantly expedite final resolution of the matter by allowing the applicant to address the official's concerns before initiation of the appeal process.

APPEARANCES: Ollie St. Clair, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Nockey Construction, Inc., seeks review of a September 25, 1991, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving its application for a grant under the Indian Business Development Program (IBDP). For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this matter to the Area Director for further consideration.

Background

On September 5, 1991, appellant submitted an application for an IBDP grant in the amount of \$61,500 to assist in the start-up of a heavy construction business. The application was reviewed by the Portland Area Office, and, on September 25, 1991, the Area Director disapproved the application, stating:

1. The loan of \$16,000 which you [Ollie St. Clair] are making to the company plus the bank line of credit of \$35,000 should provide adequate funding for start up and working capital.

2. There is an amount of \$38,000 indicated on your financial statement which should be available for working capital or collateral without requirement of grant funds.

3. Neither of the two other lenders, Safeco and Security Pacific Bank, have indicated a requirement for equity or grant funds as a condition of their financing. Financing from these sources is available without a grant and our regulations require that a grant be provided only when the applicant is unable to obtain adequate financing from other sources.

4. Due to the above factors, the application does not demonstrate a need for the grant in obtaining other financing as required for a grant approval.

The Board received appellant's notice of appeal from this decision on October 21, 1991. No briefs have been filed.

Discussion and Conclusions

Appellant's notice of appeal addresses each issue raised by the Area Director. Ollie St. Clair states that his \$16,000 loan to appellant was not a cash loan, but rather consisted of a 1988 pickup truck and tools. He also states that the \$38,000 shown on his personal financial statement, as well as a mortgage, was committed to the construction of a personal residence for his family. He notes that the house, when completed, will serve as collateral for the mortgage, and will not be available for appellant.

Appellant indicates its belief that its application was disapproved because of BIA's mistaken assumption that an additional \$54,000 was available for working capital. It also states that it was submitting its loan application to another lender who was more familiar with the IBDP process.

The Board finds that appellant's explanations as to the unavailability of working capital, and consequent inadequacy of existing funding, raise sufficient grounds to vacate the Area Director's decision, and remand this matter to him for further consideration. Appellant's explanations were not before the Area Director at the time he made his decision. There is no indication in the administrative record that explanations were required by the application form, or requested by the Area Director during his review.

[1] The Board has previously held that, in reviewing appeals filed under the various Indian Financing Act Programs, it will not apply the usual rule of appellate procedure that reviewing bodies do not normally consider information and/or arguments presented for the first time on appeal. This deviation from usual procedure is intended to ensure that BIA's decisions in this area are based upon consideration of all relevant information, while keeping the adversarial nature of the proceedings to a

minimum. Pourier v. Acting Aberdeen Area Director, 19 IBIA 266, 270 (1991); Gauthier v. Portland Area Director, 18 IBIA 303, 305-06 (1990). When the Board is aware that additional information has been presented on appeal, it has referred that information to the Area Director and asked that he reconsider his decision. In furtherance of these goals, when a BIA official determines that an application under the IBDP, or other Indian Financing Act program, should be disapproved, the issuance of a preliminary determination to that effect, allowing the applicant the opportunity to respond, could significantly expedite final resolution of the matter by allowing the applicant to address the official's concerns before the initiation of the appeal process.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the September 25, 1991, decision of the Portland Area Director is vacated, and this matter is remanded to him for further consideration.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge